
From: Irene Diaz [IDiaz@sos.state.tx.us]
Sent: Monday, November 14, 2011 4:54 PM
To: vot1973c (CRT)
Subject: Rule 81.71 submission Attn: Zach Bromer
Attachments: Admin Rule 81.71 Submission.pdf; Rule 81.71.pdf

Mr. Bromer:

Attached is the Rule 81.71 submission, in which you requested from Paul Miles.

Please call me directly should you continue have trouble viewing the attachments.

Thank you,

*Irene Diaz
Secretary of State's Office
Elections Division
512-463-9858*

PX076

The State of Texas



Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us

Phone: 512-463-5650
Fax: 512-475-2811
Dial 7-1-1 For Relay Services
(800) 252-VOTE (8683)

Hope Andrade
Secretary of State

November 9, 2011

Mr. T. Christian Herren, Jr.
Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

EXPEDITED CONSIDERATION REQUESTED

RE: Submission under Section 5, Voting Rights Act, of 1 Tex. Admin. Code § 81.71, relating to Senate Bill 14, Chapter 123, 82nd Legislature, 2011, § 9; DOJ file number 2011-2775.

Dear Mr. Herren:

The Secretary of State for the State of Texas has adopted 1 Tex. Admin. Code § 81.71 (the “Rule”), which concerns similar names standards for polling place election officials under Senate Bill 14, Chapter 123, 82nd Legislature, 2011 (precleared, in part, on September 19, 2011) (the “Act”). Under Section 9 of the Act, the Secretary of State is required to adopt standards for election officials to use in determining whether a voter’s name on identification that does not match the name exactly as it appears on the official list of registered voters is sufficiently similar to allow the voter to vote under an affidavit rather than voting provisionally.

Pursuant to the requirements of 28 C.F.R. § 51.27, the following information is submitted with respect to the Act:

- (a) & (b) A copy of the Rule is enclosed herewith and can be found at this link: [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=1&pt=4&ch=81&sch=E&r=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=1&pt=4&ch=81&sch=E&r=Y)
- (c) The attached Rule was proposed for adoption and published in the Texas Register on September 16, 2011. After the expiration of the public comment period, the Rule was submitted for final adoption, which was published on November 11, 2011 and will become effective on November 20, 2011. The Rule is described more specifically below:

Section (a) of the rule restates the language of Section 9 of the Act, specifically that when a voter’s name on the identification presented at the polling place (“presented identification”) does not exactly match the voter’s name as it appears on the official list of registered voters, the election official may accept an affidavit from the voter

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confirming the voter's identity if the election official determines the two names are substantially similar.

Section (b) of the rule requires election officials to refer to the standards set out in Section (c) of the rule in determining whether a voter's name on presented identification is substantially similar to the voter's name as it appears on the official list of registered voters.

Under Section (c) of the rule, a voter's name on the presented identification is considered substantially similar to the name on the official list of registered voters if one or more of the circumstances in subsections (c)(1)-(4) are present. In addition to one or more of those circumstances, the election official shall review whether the presented identification matches other elements on the official list of registered voters, such as the date of birth or the residence address.

The circumstances under which the election official may determine the voter's name on the presented identification is substantially similar to his or her voter's name as it appears on the official list of registered voters are as follows: (1) the name on the presented ID document is slightly different from one or more of the name fields on the official list of registered voters or one or more of the name fields on the official list of registered voters is slightly different from the name on the presented ID document; (2) the name on the presented ID document or on the official list of registered voters is a customary variation of the formal name such as, for illustrative purposes only, Bill for William, or Beto for Alberto, that is on the document or list that must match, as the case may be; (3) the voter's name on the presented ID document contains an initial, a middle name, or a former name that is not on the official list of registered voters or the official list of registered voters contains an initial, a middle name, or a former name that is not on the presented ID document; or (4) the first name, middle name, former name, or initial of the voter's name occupies a different field on the presented ID document than a first name, middle name, former name, or initial of the voters' name on the official list of registered voters. The provided examples were chosen by the Secretary of State to strike a balance between providing broad guidance to polling place election officials in comparing presented identifications to the official list of registered voters while recognizing it is impossible to provide these officials with, in effect, a complete list of all potential name derivations and misspellings.

Under Section (d) of the rule, if an election official determines the name on the presented identification substantially matches the name on the official list of registered voters, the voter shall be accepted for voting once the voter completes a similar name affidavit affirming that he or she is the person on the official list of registered voters.

Section (e) of the rule requires the election official to immediately return the presented identification to the voter after reviewing it against the voter's name on the official list of registered voters.

Section (f) of the rule requires the completed similar name affidavit to be placed in Envelope Number 4 to be delivered to the voter registrar so the registrar can make any

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necessary changes to the official list of registered voters pursuant to the correction process prescribed in §15.021 of the Texas Election Code.

Under Section (g) of the rule, if the election official determines the voter's name on the presented identification does not substantially match the voter's name as it appears on the official list of registered voters, the voter shall be offered a provisional ballot.

Section (h) of the rule provides that if the voter casts a provisional ballot, the voter is eligible to submit a valid form of identification under Section 63.0101, Texas Election Code, including the identification presented at the polling place, in person to the voter registrar's office within six days after the date of the election. This section is included to clarify that the voter may present and the voter registrar may accept the same identification that was presented at the polling place.

Section (i) of the rule requires the voter registrar to use the review process set out in Sections (c) and (d) of the rule in reviewing whether an ID document presented to the voter registrar under subsection (h) of this section is substantially similar to the voter's name on the official list of registered voters.

Section 15.021 was added to the Code by Senate Bill 680, Chapter 667, 69th Legislature, 1995, and precleared on September 25, 1995. It was amended by Senate Bill 500, Chapter 454, 75th Legislature, 1997 (precleared on August 11, 1997); Senate Bill 1368, Chapter 62, 76th Legislature, 1999 (a non-substantive change not subject to preclearance); House Bill 3181, Chapter 1178, 77th Legislature, 2001 (precleared on October 11, 2001); and House Bill 2280, Chapter 1105, 79th Legislature, 2005 (precleared on December 1, 2005).

Section 63.0101 was added to the Code by House Bill 330, Chapter 1078, 75th Legislature, 1997 (precleared on October 8, 1997). It was amended by House Bill 331, Chapter 1349, 75th Legislature, 1997 (precleared on September 2, 1997); House Bill 1603, Chapter 864, 75th Legislature, 1997 (a non-substantive change not subject to preclearance); House Bill 1549, Chapter 1315, 78th Legislature, 2003 (precleared on November 20, 2003); and most recently Senate Bill 14, Chapter 123, 82nd Legislature, 2011 (DOJ File No. 2011-2775), the section for which preclearance is still pending.

- (d) The submitting authority is the Honorable Esperanza "Hope" Andrade, Secretary of State of Texas, in her capacity as the chief elections officer of Texas. The Secretary of State's office may be reached at P.O. Box 12060, Austin, Texas 78711-2060, (512) 463-5650.
- (e) Not applicable.
- (f) Not applicable.
- (g) The authority responsible for adopting the Rule is the Texas Secretary of State.
- (h) The Rule was adopted pursuant to the provisions of Chapter 2001, Subchapter B, Texas Administrative Procedures Act (Tex. Gov't Code Ann. §§ 2001.021 through 2001.041 (Vernon 2011)).

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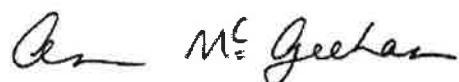
- (i) The Rule was proposed and published in the Texas Register on September 16, 2011, and public comments were heard and considered during a 30 day period beginning on that day. The final version of the Rule will become effective on November 20, 2011, per Section 2001.036 of the Texas Government Code.
- (j) The Rule will take effect on the later of November 20, 2011 or preclearance of Senate Bill 14.
- (k) The provisions of the Rule have not been implemented.
- (l) The procedures will affect residents in the state of Texas.
- (m) The reason for the changes provided in the Rule is to provide polling place election officials with standards to review when a voter's name as presented on the submitted identification document does not exactly match the voter's name on the official list of registered voters.
- (n) The Act will not affect members of any racial or linguistic minority differently from the way the general public is affected. The Act does not have the intent and will not have the effect of diluting the voting strength of any racial or linguistic minority. For more information, please contact:

The Honorable Jose Aliseda
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0645

- (o) There is no past or pending litigation concerning the subject matter of this Rule.
- (p) The procedure for the adoption of the change is not subject to preclearance.

If you have any questions or need additional information, please contact Paul Miles, Staff Attorney, Elections Division, at (512) 463-5650.

Sincerely,



Ann McGeehan
Director of Elections

Enclosure

AM:PM:id

Texas Register

| | |
|---------------------|---|
| TITLE 1 | ADMINISTRATION |
| PART 4 | OFFICE OF THE SECRETARY OF STATE |
| CHAPTER 81 | ELECTIONS |
| SUBCHAPTER E | ELECTION DAY PROCEDURES |
| RULE §81.71 | Substantially Similar Name Standards |
| ISSUE | 11/11/2011 |
| ACTION | Final/Adopted |

Preamble

No Rule Available

(a) When a voter offers to vote at a polling place using a form of identification described by §63.0101 of the Texas Election Code ("presented ID document") and the voter's name on the presented ID document does not match exactly the voter's name as it appears on the official list of registered voters, the voter's name on the presented ID document must be "substantially similar" to the voter's name as it appears on the official list of registered voters.

(b) In determining whether a voter's name on the presented ID document is substantially similar to the voter's name as it appears on the official list of registered voters, the reviewing early voting clerk, deputy early voting clerk, election judge or election clerk (collectively included in the term "election worker") shall refer to the standards in subsection (c) of this section.

(c) A voter's name on the presented ID document is considered substantially similar to the name on the official list of registered voters and a voter's name on the official list of registered voters is considered substantially similar to the name on the presented ID document if one or more of the circumstances in paragraphs (1) - (4) of this subsection are present. In determining whether one or more of those circumstances are present, election workers should consider whether information on the presented ID document matches elements of the voter's information on the official list of registered voters such as the voter's residence address or date of birth, which may be strong indicators that the name on the presented ID document is substantially similar to the name on the official list of registered voters and vice versa if:

(1) The name on the presented ID document is slightly different from one or more of the name fields on the official list of registered voters or one or more of the name fields on the official list of registered voters is slightly different from the name on the presented ID document;

(2) The name on the presented ID document or on the official list of registered voters is a customary variation of the formal name such as, for illustrative purposes only, Bill for William, or Beto for Alberto, that is on the document or list that must match, as the case may be;

(3) The voter's name on the presented ID document contains an initial, a middle name, or a former name that is not on the official list of registered voters or the official list of registered voters contains an initial, a middle name, or a former name that is not on the presented ID document; or

(4) A first name, middle name, former name, or initial of the voter's name that occupies a different field on the presented ID document than a first name, middle name, former name, or initial of the voter's name on the official list of registered voters.

(d) If the reviewing election worker makes a determination that the voter's name on the presented ID document and the official list of registered voters are substantially similar, the voter shall be accepted for voting if the voter submits the "Similar Name Affidavit" prescribed by the Secretary of State stating that the voter offering the presented ID document is the same person on the official list of registered voters.

(e) After the determination is complete, the presented ID document must be returned to the voter immediately.

(f) The completed Similar Name Affidavit shall be placed in Envelope No. 4 (or other designated container) to be delivered to the county voter registrar to address any necessary changes to the official list of registered voters in accordance with the correction process prescribed in §15.021 of the Texas Election Code.

(g) If the reviewing election worker makes a determination that the voter's names on the presented ID document and the official list of registered voters are not substantially similar, the voter shall be offered a provisional ballot. The voter shall be processed as a provisional voter in accordance with the provisional voter process established under Texas law, at the time of voting.

(h) If the voter casts a provisional ballot due to a determination by the election worker that the name on the presented ID document was not substantially similar to the name on the official list of registered voters, the voter is eligible to submit a form of identification described by §63.0101 of the Texas Election Code, including the presented ID document that the voter presented at the polling place, in person to the voter registrar's office within six days of election day pursuant to Texas law. The voter shall be informed of this procedure at the time the voter casts his or her provisional ballot.

(i) In determining whether an ID document presented to the voter registrar under subsection (h) of this section is substantially similar to the voter's name on the official list of registered voters, the voter registrar shall utilize the processes outlined in subsections (c) and (d) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 31, 2011

TRD-201104689

John Sepehri

General Counsel

Office of the Secretary of State

Effective date: November 20, 2011

Proposal publication date: September 16, 2011

For further information, please call: (512) 463-5650

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